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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
10

11 RILEY'S AMERICAN HERITAGE
12 FARMS; and JAMES PATRICK
13 RILEY,

14 Plaintiffs,

15 v.

16 CLAREMONT UNIFIED SCHOOL
17 DISTRICT; JAMES ELSASSER;
18 STEVEN LLANUSA; HILARY
19 LACONTE; BETH BINGHAM;
20 NANCY TRESER OSGOOD; DAVID
S. NEMER; ANN O'CONNOR; and
BRENDA HAMLETT,

Defendants.

Case No.: 5:18-cv-02185-JGB-SHKx
Assigned to: Hon. Jesus G. Bernal

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: October 12, 2018
Trial Date: June 2, 2020

21 1. A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
23 proprietary, or private information for which special privacy protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may be
25 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
26 the following Stipulated Protective Order. The parties acknowledge that this Order
27 does not confer blanket protections on all disclosures or responses to discovery and
28 that the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable
2 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
3 that this Stipulated Protective Order does not entitle them to file confidential
4 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
5 followed and the standards that will be applied when a party seeks permission from
6 the court to file material under seal.

7 B. GOOD CAUSE STATEMENT

8 The defendants in this Action are administrators and elected Board members of
9 Claremont Unified School District, a public primary and secondary school district.
10 Discovery in this Action will involve documents and testimony which reveal the
11 identities of, and possibly other information pertaining to, minors who are enrolled as
12 students in the Claremont Unified School District, as well as those of the students'
13 parent(s) or guardian(s). These materials and information are subject to privacy rights
14 under federal and state statutes, court rules, case decisions, or common law, including,
15 but not limited to, the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g;
16 34 CFR Part 99), as well as the Civil Local Rules pertaining to redaction of minors'
17 names. Accordingly, to expedite the flow of information, to facilitate the prompt
18 resolution of disputes over confidentiality of discovery materials, to adequately
19 protect information the Parties are entitled to keep confidential, to ensure that the
20 Parties are permitted reasonable and necessary uses of such material in preparation
21 for and in the conduct of trial, to address their handling at the end of the litigation, and
22 to serve the ends of justice, a protective order for such information is justified in this
23 matter. It is the intent of the Parties that information will not be designated as
24 confidential for tactical reasons and that nothing be so designated without a good faith
25 belief that it has been maintained in a confidential, non-public manner, and there is
26 good cause why it should not be part of the public record of this case.

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1 2. DEFINITIONS

2 2.1 Action: this pending federal law suit.

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation
4 of information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it is generated, stored or maintained) or tangible things that qualify for protection
7 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
8 Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced or
17 generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as
20 an expert witness or as a consultant in this action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a Party
27 to this action but are retained to represent or advise a Party to this Action and have
28 appeared in this Action on behalf of that Party or are affiliated with a law firm which

has appeared on behalf of that party, and includes support staff.

2.11 Party: any Party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all

1 appeals, rehearings, remands, trials, or reviews of this Action, including the time
2 limits for filing any motions or applications for extension of time pursuant to
3 applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or Non-Party that designates information or items for protection under this
7 Order must take care to limit any such designation to specific material that qualifies
8 under the appropriate standards. The Designating Party must designate for protection
9 only those parts of material, documents, items, or oral or written communications that
10 qualify so that other portions of the material, documents, items, or communications
11 for which protection is not warranted are not swept unjustifiably within the ambit of
12 this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations
14 that are shown to be clearly unjustified or that have been made for an improper
15 purpose (e.g., to unnecessarily encumber or retard the case development process or to
16 impose unnecessary expenses and burdens on other parties) may expose the
17 Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the inapplicable designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as
23 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
24 protection under this Protective Order must be clearly so designated before the
25 material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents,
28 but excluding transcripts of depositions or other pretrial or trial proceedings), that the

1 Producing Party affix the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
2 legend”), to each page that contains protected material. If only a portion or portions
3 of the material on a page qualifies for protection, the Producing Party also must clearly
4 identify the protected portion(s) (e.g., by making appropriate markings in the
5 margins).

6 A Party or Non-Party that makes original documents available for inspection
7 need not designate them for protection until after the inspecting Party has indicated
8 which documents it would like copied and produced. During the inspection and before
9 the designation, all of the material made available for inspection shall be deemed
10 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
11 copied and produced, the Producing Party must determine which documents, or
12 portions thereof, qualify for protection under this Order. Then, before producing the
13 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
14 to each page that contains Protected Material. If only a portion or portions of the
15 material on a page qualifies for protection, the Producing Party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the
17 margins).

18 (b) for testimony given in depositions that the Designating Party identify the
19 Disclosure or Discovery Material on the record, before the close of the deposition all
20 protected testimony.

21 (c) for information produced in some form other than documentary and for any
22 other tangible items, that the Producing Party affix in a prominent place on the exterior
23 of the container or containers in which the information or item is stored the legend
24 “CONFIDENTIAL.” If only a portion or portions of the information warrants
25 protection, the Producing Party, to the extent practicable, shall identify the protected
26 portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
28 failure to designate qualified information or items does not, standing alone, waive the

Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
9 is reasonably necessary for this Action and who have signed the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants and mock jurors to whom disclosure is
14 reasonably necessary for this Action and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses, in the
19 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
20 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A); and (2) they will not be permitted to keep any confidential information
22 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
23 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal Protected
25 Material must be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel, mutually
28 agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this action
16 as “CONFIDENTIAL” before a determination by the court from which the subpoena
17 or order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
21 directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the remedies
27 and relief provided by this Order. Nothing in these provisions should be construed as
28 prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce
2 a Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential
4 information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and

11 (3) make the information requested available for inspection by the Non-
12 Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court within 14
14 days of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request.
16 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
17 any information in its possession or control that is subject to the confidentiality
18 agreement with the Non-Party before a determination by the court. Absent a court
19 order to the contrary, the Non-Party shall bear the burden and expense of seeking
20 protection in this court of its Protected Material.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
27 persons to whom unauthorized disclosures were made of all the terms of this Order,
28 and (d) request such person or persons to execute the "Acknowledgment and

Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party’s request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

12.4 Terms of Protective Order Binding Pending Approval and Entry. The

Parties and all signatories to the “Acknowledgment and Agreement to Be Bound” (Exhibit A) agree to be bound by this Stipulated Protective Order pending its approval and entry by the Court. In the event that the Court modifies this Stipulated Protective Order, or in the event that the court enters a different Order, the Parties agree to be bound by this Stipulated Protective Order until such time as the court may enter such different Order. It is the Parties’ intent to be bound by the terms of this Stipulated Protective Order pending its entry so as to allow for immediate production of Protected Material under the terms herein.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate

1 measures including, without limitation, contempt proceedings and/or monetary
2 sanctions.

3
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 Dated: November 13, 2019

Goe Forsythe & Hodges, LLP

7
8 By: /s/ Thomas J. Eastmond
9 Thomas J. Eastmond
10 Ryan S. Riddles
11 Attorneys for Plaintiffs,
Riley's American Heritage Farms and
James Patrick Riley
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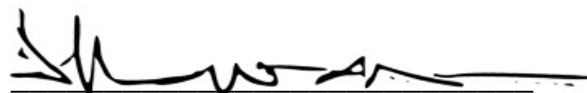
13 Dated: November 13, 2019

Meyers Fozi & Dwork, LLP

14
15 By: /s/ Daniel S. Modafferi
16 Golnar J. Fozi
17 Daniel S. Modafferi
18 Attorneys for Defendants,
19 James Elsasser, Steven Llanusa, Hilary
LaConte, Beth Bingham; Nancy Treser
Osgood, David Nemer, Ann O'Connor,
and Brenda Hamlett
20

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 Dated: November 18, 2019



23 Hon. Shashi H. Kewalramani
24 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District of
7 California on _____ [date] in the case of *Riley's American Heritage Farms, et*
8 *al. v. Claremont Unified School District, et al.*, case no. 5:18-cv-02185-JGB-SHK. I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions
14 of this Order. I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms of
16 this Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____